

BOARD OF APPEALS CASE NO. 5163

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BEFORE THE

APPLICANTS: Anthony Boias

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow an existing 6 foot
fence in the R3/CDP District; 1312 St. Francis
Road, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/3/01 & 8/8/01

HEARING DATE: October 8, 2001

Record: 8/3/01 & 8/10/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Anthony Boias, is requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence higher than 4 foot in height in an R3 Urban Residential District Community Development Project.

The subject parcel is located at 1312 St. Francis Road, Bel Air, Maryland 21014, in the Third Election District, and is more particularly identified on Tax Map 40, Grid Number 3E, Parcel 0335, Lot 169, in the subdivision of Marywood. The parcel contains approximately 0.254 acres.

The Applicant, Anthony Boias, appeared and testified that he is the owner of the subject property. He indicated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein. The witness described the property as a corner lot with frontage on St. Francis Road and Princeton Lane. The property is improved by a one story dwelling, an in-ground pool with a wood deck, and a 6 foot fence.

The Applicant stated that there was a fence in place when he purchased the property, but it was decaying and needed to be replaced. He indicated that he has removed the old fence, and begun replacing it with a new one. According to the Applicant, he used care when constructing the new fence to ensure that it enhanced the appearance of the property, and did not obstruct the neighbors' view. He testified that the fence is necessary for security purposes, and is used to keep the neighborhood children out of his yard, and away from the in-ground pool.

The Applicant referred to the site plan (Staff Report Attachment 3), and stated that it shows the location of the existing home, pool and fence. He indicated that the existing

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fence is outlined in yellow on the site plan. The witness then described several photographs attached to the Department of Planning and Zoning Staff Report. Attachment 7A is a photograph of the rear and side of his house taken from Princeton Lane. It shows the existing fence, as well as the portion of the fence which is under construction across the rear of the property. Attachment 7C shows the front of the house and property, and the intersection of St Francis Road and Princeton Lane.

Finally, Mr. Boias testified that the fence is compatible with, and similar in size and appearance to other fences in the neighborhood. The witness does not believe that the granting of the requested variance would have any adverse impact on neighboring properties, because the fence is attractive, and it does not block the view for oncoming traffic on either St. Francis Road or Princeton Lane.

The Applicant introduced a letter (Applicant's Exhibit 1) from Roy and Carolyn Edmondson, the property owners who live across the street at 1312 St. Francis Road. In that letter, the Edmondsons stated that they "have no objections to allowing a variance for a 6 foot high fence" on the Applicant's property. They also stated that the fence has no detrimental effect on their property. In their opinion, the fence enhances the value of their property, and is aesthetically pleasing.

The Department of Planning and Zoning's September 24, 2001 Staff Report recommended approval of the requested variance, stating that "[t]he Applicant's property is a corner lot and is subject to two front yard setbacks. The fence is located 60 feet from the road intersection and does not adversely impact traffic on the roadway. The request, if approved, should not adversely impact the intent of the code or the neighborhood."

No witnesses appeared in opposition to the requested variance.

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CONCLUSION:

The Applicant, Anthony Boias, is requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence more than the required 4 foot in height in an R3 Urban Residential District Community Development Project.

Section 267-24B(1) of the Harford County Code provides that:

“Front yards. For single-family detached units, walls and fences shall not exceed four (4) feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”

Section 267-11 of The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two-prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The property is a corner lot, and hence subject to two side yard setbacks. Thus, the first prong of the Cromwell test has been met.

It must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because if the property was not subject to two front yard setbacks the Applicant would not need a variance to retain the existing fence. If the variance is not granted, the Applicant will be denied property rights commonly enjoyed by others in his neighborhood. Other property owners within Marywood, and Harford County generally, have greater flexibility in the construction of fences on similarly sized lots.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. The fence is compatible with other fences in the neighborhood. Further, the existing fence does not interfere with site distance at the intersection of St. Francis Road and Princeton Lane.

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The Hearing Examiner recommends approval of the Applicant's request, subject to the Applicant obtaining all necessary permits and inspections.

Date NOVEMBER 6, 2001

Rebecca A. Bryant
Zoning Hearing Examiner